Nandalal Jana Vs State

Criminal Revision No. 1082 of 1995

Court: Calcutta High Court

Date of Decision: Sept. 13, 1995

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 107, 108, 109, 110, 111

Citation: (1996) 2 ILR (Cal) 261

Hon'ble Judges: R.P. Gupta, J

Bench: Single Bench

Advocate: Himangshu Dey and S.S. Mahapatra, for the Appellant;Mukti Prasanna Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

R.P. Gupta, J.
The Petitioners have approached this Court in revision against order dated March 30, 1995 passed in N.G.R. (E) 34/95 of

the Court of Executive Magistrate, Arambagh and against notice issued u/s 107 of the Code of Criminal Procedure. By this notice of March 30,

1995 the Petitioners were asked to show cause as to why they will not be furnishing Bond of Rs. 500 (Rupees five hundred) with one surety each

for maintaining peace for a period of one year. The impugned order of the same date was as follows:

Seen the PR u/s 107/116(c) Code of Criminal Procedure against the accused 1) Nandalal Jana, 2) Billa Mangal Kundu, 3) Sahadev Panja, 4)

Bancha Ram Panja, 5) Srimanta Panja, 6) Adaitya Panja. Cognizance is taken. Issue Notice.

To 16-5-95 for SR and appearance

Sd/- S.K. Das

30.3.95

Executive Magistrate, Arambagh

2. The contention of the learned Counsel for the Petitioners is that this order fails to comply with the conditions of drawing proceedings u/s 107 of

the Code of Criminal Procedure, as laid down u/s 111 of the Code of Criminal Procedure. Neither the order nor the notice mentioned on what

rounds the Magistrate was satisfied that there was apprehension of breach of peace.

3. In the notice there is recital--

whereas I am satisfied that there is apprehension of breach of peace at the instance of the 2nd party. Hence, I draw up proceedings u/s 107 Code

of Criminal Procedure....

4. Thus apparently neither in the notice issued to the Petitioner nor in the order sheet there was any mention of the grounds of fact which led the

Magistrate to be satisfied about the apprehension of breach of peace.

5. Section 111 of the Code of Criminal Procedure, states as follows:

111. When a Magistrate acting u/s 107, Section 108, Section 109, Section 110, deems it necessary, to require any person to show cause under

such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the

term for which it is to be in force, and the number, character and class of sureties (if any) required.

6. It becomes clear from perusal of all the above that the Respondents are to be given notice of substance of information received against them and

even the order which is made by the Magistrate about issuing show cause notice u/s 107 of the Code of Criminal Procedure is to specific mention

in writing the reasons of satisfaction. So the facts had to be mentioned leading to the satisfactory reasons. The purpose is clear that the

Respondents came to know why they are sought to be proceeded against a provision which puts restrictions on them in terms of the Bond sought.

7. It is unnecessary to refer specific to precedent on this provisions, as in a number of precedents the various courts, including this Court, has held

that if reasons are not narrated in the order of drawing up proceedings, or in the notice issued to Respondents the same are illegal and the

proceedings has to be quashed.

8. In this view of the matter. I quash the proceeding pending before the learned Executive Magistrate concerned. Petition is accordingly allowed.

9. Let a copy of this order be sent to the learned Executive Magistrate, Arambagh immediately.